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101ST CONGRESS
2d Session

SENATE

REPORT
101-509

PROVIDING THAT A PORTION OF THE INCOME DERIVED FROM TRUST OR RESTRICTED LAND HELD BY AN INDIVIDUAL INDIAN SHALL NOT BE CONSIDERED AS A RESOURCE OR INCOME IN DETERMINING ELIGIBILITY FOR ASSISTANCE UNDER THE SOCIAL SECURITY ACT OR ANY OTHER FEDERAL OR FEDERALLY ASSISTED PROGRAM

OCTOBER 5 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. INOUYE, from the Select Committee on Indian Affairs submitted the following

REPORT

[To accompany S. 2995]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2995) to provide that a portion of the income derived from trust or restricted land held by an individual Indian shall not be considered as a resource or income in determining eligibility for assistance under the Social Security Act or any other Federal or Federally assisted program, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 2995 is: (1) to treat individual Indian income derived from trust land consistently with other trust income; (2) to end the real hardship suffered by needy, elderly Indian people who, because of trust income, available or unavailable, or because of unreliable estimates and/or prorating of trust income, are deemed ineligible for Supplementary Security Income (SSI), Medicaid, BIA General Assistance or other Federal assistance programs in a haphazard fashion; and (3) to alleviate the enormous paperwork burden on BIA social services, Individual Indian Money (IIM) account administrators and realty personnel, and personnel of other Federal agencies who must spend an inordinate amount of time recording thousands of small trust payments, verifying income amounts, filing reports and sending out related notices.

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BACKGROUND

ADVERSE EFFECTS OF CURRENT TREATMENT OF INDIVIDUAL TRUST INCOME

The Committee received an impressive number of letters and resolutions over a several-year period from tribes, individual Indian people, BIA officials in the field, and attorneys commenting on the hardship caused needy, Indian people and the wasted Federal employee time due to the practice of counting small and erratic individual Indian monies derived from trust lands toward eligibility for entitlement programs.

The Committee also received complaints about the unfairness and questionable legality of Federal agency practices of treating individual Indian trust money derived from trust lands differently than other trust monies and in not allowing Indian people to retain reasonable assets and income and still remain eligible for public entitlements.

The Committee learned of BIA offices where two employees each spend four hours per day monitoring and verifying thousands of miniscule lease payments, of elderly Indian people losing their SSI or General Assistance based on erroneous projection of lease income, of poverty-stricken Indian families being deemed ineligible for Federal assistance based on projected lease income which the family never received as it had been assigned elsewhere, usually to the tribal credit program, with the permission of the BIA. A common example of assignment of lease income is as security for a loan for funeral expenses.

The Committee was advised of Social Security offices sending elderly, Indian people as many as four notices per month adjusting and revising their benefits. In one case brought to the Committee's attention, a blind Indian woman received four SSI notices totalling 18 pages over a five-week period in regard to her lease income. Because projects of income are often incorrect, an individual may well receive as many as four SSI notices for each lease payment: the first giving notice that benefits will be reduced because of an estimate of trust income, the second correcting the estimate, the third refunding the money withheld because of the estimate and the fourth assessing an overpayment for the month the lease payment was actually received. Most of the concerns of the tribes and the many BIA officials, including superintendents, area directors and social workers, centers around the treatment of Indian monies by the following four programs:

Supplementary Security Income

The Supplementary Security Income (SSI) program is a needs-based program administered by the Social Security Administration that serves the nation's aged and disabled. Income from individual Indian lands is counted when it is received (and often when it is not received) to reduce benefits or assess overpayments.

Tribal elders with trust income are subject to continual fluctuations in benefits and may be left for several months with no income at all because of SSI's treatment of trust income. (Previously assigned, unavailable income is counted, and benefits are paid

on unreliable estimates of future income.) Many elders are unable to maintain the diet that their medical conditions require. Loss of benefits and repeated overpayment notices cause enormous stress, often exacerbating health problems.

Medicaid

Those losing SSI benefits may also lose categorical, or automatic, Medicaid coverage for a period of time, and must apply for other programs if they have medical needs. Tribal elders in Arizona may have to go off the reservation to apply to the county for Arizona Health Care Cost Containment System coverage. Those losing Medicaid coverage may also be denied other health services because of jurisdictional confusion between the Indian Health Service and the states over who is responsible for providing health coverage to Indians.

BIA General Assistance

The BIA General Assistance (GA) program provides financial assistance for on-reservation Indian people who are not able to find work and who are not eligible for other programs.

Often needy Indian people can be denied GA benefits because of trust money that is already spent, is not guaranteed to arrive, or will never arrive because it has been previously assigned, with BIA consent, to the tribal credit program. Benefit levels are already tied to the state's payment level, which is often far below the poverty line. Further, BIA social services staff does not have the ability to serve GA recipients adequately as long as they must base payments on estimated income. The General Assistance population, being a younger population, will have less trust income than the SSI population, if they have any at all.

Aid to Families with Dependent Children (AFDC)

The AFDC program provides financial assistance to low-income families with dependent children. This Indian population receives the smallest lease payments and probably imposes the largest administrative burden on the BIA, as the Bureau must often spend time verifying $10 or less in lease payments.

CURRENT TREATMENT OF OTHER TRUST INCOME

S. 2995 would provide an express, limited exemption for individual trust income for purposes of determining eligibility for Federal entitlement programs. All other types of trust income is provided some express exemption under current law.

The basic categories of existing statutory exemptions for Indian monies are: (1) Alaska Native Claims Settlement Act monies; (2) Judgment Funds; (3) Per Capita payments; and (4) specific one-time payments (e.g., Puyallup Land Claims Settlement Act monies). The Alaska Native Claims Settlement and the per capita payments are most similar to the monies that would be protected under S. 2995, in that they are recurring monies as opposed to one-time payments.

Payment Under the Alaska Native Claims Settlement Act (P.L. 92-203) and its Amendments of 1987 (P.L. 100-241).

The exemption applies to: (1) cash (including cash dividends on stock received from a Native corporation) to the extent that it does not, in the aggregate, exceed $2,000 per individual per year; (2) stock (including stock issued or distributed by a Native corporation as a dividend or distribution on stock; (3) a partnership interest; (4) land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution stock); and (5) an interest in a settlement trust.

Indian Judgment Funds Distribution Act, P.L. 93-134, as amended by P.L. 97-458) and Tribal Per Capita and Annunity Payments (P.L. 98-64)

Prior to the enactment of P.L. 98-64, only judgment funds (and the exclusions applicable to purchases made with an interest and investment income accrued thereon) were excluded under the provisions of P.L. 93-134, as amended by P.L. 97-458. P.L. 98-64 removed the requirement that such exclusions apply only to judgment funds. Effective August 2, 1983, funds held in trust for Indian tribes and distributed per capita in payments of under $2,000 were excluded from consideration as income or resources for purposes of Federal program entitlement.

Although Congressional policy has consistently protected Indian lands and Indian moneys for the exclusive use and benefit of Indian people, the early allotment legislation understandably did not contain language addressing the ownership of Indian trust lands. As a consequence, trust funds distributed to individual Indian people pursuant to contemporary acts of Congress are treated as exempt by federal entitlement programs, while income from General Allotment Act lands are not (even though that 1887 law provides that these lands are for the "sole use and benefit" of allottees, to be kept "free of all charge and incumbrance").

TRUST RESPONSIBILITY

S. 2995 clarifies the status of individual trust income and Congress' intent to protect those moneys. The highest level of fiduciary responsibility applies to management of individual trust lands by the Federal government, and to income produced from those efforts. The Supreme Court, in 1983 in *United States* v. *Mitchell,* 463 U.S. 206, ruled that because of the high degree of Federal management of trust lands, the highest fiduciary standards must apply to protect the land and the landowners' right to receive income from it.

Squire v. *Capoeman,* 351 U.S. 1 (1956), established the principle that individual trust lands and their direct income should be protected, and this ruling was upheld in numerous succeeding cases. S. 2995 protects the same income that is protected from taxation by *Squire* v. *Capoeman,* namely, direct incomne accruing to the landowner from his or her individual trust lands as managed by the Federal government. The entitlement program policies that diminish the benefit of individual trust income violate the Federal trust

responsibility and impede discharge of that responsibility by the Bureau of Indian Affairs.

PAPERWORK REDUCTION

The inclusion of individual trust income to reduce or deny Federal entitlement benefits is a breach of the fiduciary duty that every Federal agency has to protect trust income for the benefit of Indian people. This breach invites endless administrative appeals and repeated litigation. Even without appeals and litigation, the cost to the BIA and other Federal agencies of keeping accurate track of multitudinous small lease and grazing payments for purposes of program eligibility is enormous in terms of program time and money, undoubtedly more than the Federal money saves through the resulting reduction in entitlements.

Examples of the paperwork burden caused by entitlement programs' counting of individual trust moneys provided by BIA officials follow:

Blackfeet Agency, Montana

Tribal members' average trust income is $242 per year. BIA social services staff provide approximately 1,000 trust income verifications per year to the welfare programs. Verifications require one full-time staff position. Social services staff also supervise many IIM accounts to try to mitigate the hardship for the older tribal members on SSI. (If the money is in a restricted account, it will not be counted by SSI until released.) Such supervision requires another half-time position.

Pima Agency, Arizona

An IIM staff of two spends three or four hours a day verifying trust income. Additionally, BIA staff of various departments often assist tribal members with trust money/entitlement program problems. For example, Pima Agency Realty Officer Robert Donlevy recently spent four hours trying to assist an elderly gentleman who was threatened with suspension of his SSI due to an estimate of future trust income, as the gentleman could not convince SSI to remove the estimate (he doubted he would get the money). SSI told him to get "certification" from BIA that the money absolutely would not arrive as estimated. After four hours of conversations with the gentleman and attempts to reach the SSI local office by telephone (notices and information numbers gave only "800" numbers), Mr. Donlevy had only managed to put a message on a tape recorder. Even with such help from the BIA, legal services or others, SSI will often require tribal elders to "wait and see" if their money really comes or not before the SSI denial is reconsidered.

Eastern Navajo Agency, New Mexico

The IIM office has often been asked to review up to 1,800 IIM accounts per month to verify the presence or absence of trust income. In a typical monthly report during 1989 to two state welfare offices (administering AFDC and Food Stamp programs), the IIM office reviewed 447 accounts as required and determined that there had been activity in only 78 of those accounts with total de-

posits and disbursements under $5 in 31 of these cases, no disbursement over $300, and only six disbursements over $100. Trust income received by older tribal members seldom exceeds $1,000 per year, according to the IIM supervisor.

Rosebud Agency, South Dakota

Requests for verification of trust income require one full-time staff position. Over 70% of tribal members receive less than $200 per year in trust income, and over 50% receive less than $50 per year.

Sisseton Agency, South Dakota

The IIM office responds to approximately 2,000 requests for verification of trust income per year from the Department of Veterans Affairs, Social Security Administration, county welfare offices, and BIA/GA program staff.

Other Considerations

$4,000 exemption

The Committee believes the $4,000 income exemption level is important for two basic reasons: (1) the exemption would allow a person to achieve a reasonable standard of living in a rural area, corresponding with Housing an Urban Development's "very low income" criteria, and (2) Federal programs should no longer be obligated to spend time verifying trust income, as in the great majority of cases the program participants' trust income will be below the $4,000 exemption level.

The $4,000 figure corresponds with the amount of income a tribal elder would need to be self-sufficient in a rural area, if they also had SSI or a combination of SSI and Social Security. Many tribal elders receive between $200 and $300 a month in Social Security which is then "supplemented" by SSI to bring their total monthly income to about $400. The $400 income level seldom allows an elder to maintain a reliable vehicle, to pay winter heating bills or to maintain a healthy diet (especially if they have health complications, such as diabetes or high blood pressure). Tribal elders also often have to contribute to the financial support of children.

Very few Indian individuals who would be affected by S. 2995 receive as much as $4,000 per year in lease income. A greater number receive between $1,000 and $2,000 per year. Many, including a large number of tribal elders in the Dakotas, receive only $100 or $200.

The Committee believes that a $4,000 per year exemption is necessary to save administrative costs. A $4,000 exemption would allow the Federal programs to reasonably assume that lesser amounts of yearly trust income reported by claimants (for example, amounts less than $3,000 or $2,500) are exempt without requiring further verification of that income. The SSI program currently uses this type of "developmental tolerance" policy in regard to liquid resources which appear to be well below its exempt resource level. The Committee understands that the overwhelming majority of cases would involve yearly lease payments of under $2,500, and expects that Federal programs would adopt "developmental toler-

ance" policies similar to SSI's, thus relieving their programs and the BIA of the high administrative cost of closely tracking these moneys.

NON-INDIAN INCOME AND RESOURCE EXEMPTIONS

The Committee reviewed Indian and non-Indian statutory exemptions during the deliberation on this legislation. There are a number of statutes, which are not Indian-specific, that exempt various monies from Federal assistance determinations. For instance, SSI excludes, among others, the following monies: (1) a house of any value; (2) $6,000 in income-producing agricultural property and $780/year in net "earned" income from that land; (3) $2,000 in savings; (4) $1,500 in burial expenses; (5) the value of food coupons under the Food Stamp Act; (6) the value of Federally-donated foods donated under Section 32 of P.L. 74-320 or section 3416 of the Agriculture Act of 1949; (7) the value of free or reduced priced food for women and children under the Child Nutrition Act of 1966 and the National School Lunch Act; (8) assistance to prevent fuel cut-offs and promote energy efficiency under the Emergency Energy Conservation Services Program or the Energy Crisis Assistance Program; (9) fuel assistance payments and allowances under the Home Energy Assistance Act; (10) the value of any assistance paid with respect to a dwelling unit under the U.S. Housing Act, the Housing and Urban Development Act of 1965 or Title V of the Housing Act of 1949; (11) grants or loans to undergraduate students made or insured under the Higher Education Amendments; (12) payments under Title VI of the Rehabilitation Act of 1973; (13) compensation provided volunteers in the foster grandparents program; and (14) assistance to an individual under the Older Americans Act.

Federal courts have also ruled that needs-based Federal programs may not count other Federal programs' monies in a manner that undermines competing Federal goals. For example, the SSI program may not count a veteran's VA pension benefits (or, in some jurisdictions, the increased spousal VA benefit) to decrease his or her spouse's SSI. Also, SSI beneficiaries entitled to German reparations payments are entitled to full SSI benefits.

Legislative History

S. 2995 was introduced on August 3, 1990, by Senator Dashle on behalf of himself, Senators Inouye, McCain and Burdick, and was referred to the Select Committee on Indian Affairs. The bill was considered by the Select Committee in an open business session on September 12, 1990, and was ordered reported with a technical amendment.

Committee Recommendation and Tabulation of Vote

In open business session on September 12, 1990, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, ordered S. 2995 reported with a technical amendment and with the recommendation that the Senate adopt the bill.

SECTION-BY-SECTION SUMMARY ANALYSIS

SECTION 1—EXEMPTION

Section 1 exempts income of up to $4,000 a year derived from individual trust or restricted lands from consideration as a resource or income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 2995, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 21, 1990.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2995, as ordered reported by the Select Committee on Indian Affairs on September 12, 1990. S. 2995 provides that up to $4,000 in income derived from trusts or restricted lands held by individual Indians shall not be considered as income when determining eligibility for assistance for any federal or federally assisted program. This income exemption is estimated to increase federal entitlement costs by $2 million annually. The bill would also increase authorization levels by an estimated $500 thousand annually for the Bureau of Indian Affairs' General Assistance program.

Most of the entitlement costs are in the Supplemental Security Income (SSI) and Aid to Families with Dependent Children (AFDC) programs. There would be insignificant cost increases in other federal programs, including Veterans' Pensions, Food Stamps and Medicaid. State and local government costs are estimated to increase by $1 million, for the state share of AFDC and Medicaid benefits.

These estimates were based on Indian trust income data from the Bureau of Indian Affairs (BIA) suggesting that fewer than 30,000 Indians, or approximately 2 percent of the American Indian population, are receiving individual trust income through "Individual Indian Monies" (IIM) accounts. CBO assumed that Indians receiving individual trust income participate in various federal welfare programs at the same rate as other Indians. Thus, benefits were estimated to increase for 2 percent of the Indians receiving SSI, AFDC, and other federal programs. The number of Indian participants in various programs was estimated on the basis of program data and tabulations from the 1980 Census Supplementary Questionnaire for American Indians. Average benefit increases in SSI, AFDC and other programs were based on average IIM payments of $420 annually and the relevent program's rules for caiculating benefits.

There is anecdotal evidence suggesting that Indians receiving IIM payments tend to be elderly, thus their participation could be higher in the SSI program, and lower in the AFDC program. If this

is so, costs for the SSI program could be greater than the CBO estimate of $1 million, and costs for the AFDC program could be less than the CBO estimate of $1 million. However, these differences would probably be offsetting, and so entitlement costs would still total $2 million annually. Benefit costs in other entitlement programs are estimated to be insignificant (less than $500,000 annually) because of the small number of people affected.

The $500,000 estimated authorization increase for the BIA's General Assistance program is based on annual participation data reported by the General Accounting Office and the average IIM payment estimate of $420.

After discussions with the Social Security Administration (SSA) and BIA, CBO estimates that there would be no significant savings in administrative costs due to the exemption. The SSA, the Veterans' Administration and state welfare agencies would still have to keep track of the trust income because the exemption is for trust income up to $4,000. There could be some decrease in the workload for employees of the BIA field offices, but CBO does not expect it would be significant.

If you would like further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julia Isaacs (226–2820).

Sincerely,

ROBERT D. REISCHAUER,
Director.

EXECUTIVE COMMUNICATIONS

Although the Committee requested the views of the United States Department of the Interior on S. 2995, the Committee did not receive any statement from that Department or other agencies of the Federal Government.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluation the regulatory and paperwork impact that would be incurred in carrying out the provisions of the bill. The Committee believes that S. 2995 will significantly reduce the paperwork burden on BIA and other Federal personnel.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes in italic the following changes in existing law:

(25 U.S.C. 1408)

Interests of individual Indians in trust or restricted lands, *and income up to $4,000 per annum derived therefrom,* shall not be considered a resource *or income* in determining eligibility for assistance under the Social Security Act (42 U.S.C.A. Section 301 et seq.) or any other Federal or federally assisted program.

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